

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kelly Lyon	Team: Squad #10	CCRB Case #: 201904471	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/21/2019 8:35 PM	Location of Incident: § 87(2)(b)	Precinct: 07	18 Mo. SOL 11/21/2020	EO SOL 7/8/2021	
Date/Time CV Reported Thu, 05/23/2019 9:01 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 05/23/2019 9:01 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Ricardo Nuesi	11709	961010	PSA 4
2. POM Martin Rowley	31790	953345	PSA 4
3. POF Casondra Ziegler	26000	958030	PSA 4
4. POF Monica Gorman	24099	963053	PSA 4
5. SGT Dion Gaspard	01230	945749	PSA 4
6. POF Whitney Merizalde	11971	956928	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Moran	25250	963170	PSA 4
2. POM Daniel Halligan	26020	964041	PSA 4
3. POM Shawn Reiss	16193	957914	PSA 4
4. POM Vincent Ayres	16511	957345	PSA 4
5. SGT David Fargnoli	04911	928270	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Martin Rowley	Abuse: Police Officer Martin Rowley entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.POM Ricardo Nuesi	Abuse: Police Officer Ricardo Nuesi entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.POM Martin Rowley	Abuse: Police Officer Martin Rowley threatened to remove § 87(2)(b) to the hospital.	§ 87(2)(b)
D.POM Martin Rowley	Force: Police Officer Martin Rowley used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Martin Rowley	Abuse: Police Officer Martin Rowley interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
F.POM Ricardo Nuesi	Abuse: Police Officer Ricardo Nuesi threatened to remove § 87(2)(b) to the hospital.	§ 87(2)(b)
G.POF Casondra Ziegler	Abuse: Police Officer Casondra Ziegler entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
H.POF Monica Gorman	Abuse: Police Officer Monica Gorman entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
I.POF Whitney Merizalde	Abuse: Police Officer Whitney Merizalde entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
J.POF Casondra Ziegler	Abuse: Police Officer Casondra Ziegler threatened to remove § 87(2)(b) to the hospital.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
K.SGT Dion Gaspard	Abuse: Sergeant Dion Gaspard entered § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]

Case Summary

On May 23, 2019, § 87(2)(b) filed this complaint with the CCRB online. The case was truncated on August 8, 2019, and reopened on November 27, 2019.

On May 21, 2019, at approximately 8:35 p.m., § 87(2)(b) was inside her apartment, located at § 87(2)(b), in Manhattan, when PO Martin Rowley and PO Ricardo Nuesi of PSA 4, knocked on her door and informed § 87(2)(b) that they were there to perform a wellness check. § 87(2)(b) cracked open her door and called her counselor, § 87(2)(b) (last name unknown), and spoke to her on speakerphone. § 87(2)(b) informed § 87(2)(b) that she had called NYC Well and requested a wellness check because she had not heard from § 87(2)(b) in over three hours. § 87(2)(b) attempted to shut her door, but PO Rowley placed his foot in the door and PO Nuesi placed his asp in the door to prevent it from closing (**Allegation A and B: Abuse of Authority – Entry of Premises**, § 87(2)(g)). PO Rowley told § 87(2)(b) to let him come inside otherwise he would call EMS and have them drag her out of her apartment (**Allegation C: Abuse of Authority – Threat re: removal to hospital**, § 87(2)(g)). PO Rowley told § 87(2)(b) to step back from the door and then forcibly pushed the door open as he entered the apartment, causing the door to hit § 87(2)(b) and knock her to the ground (**Allegation D: Force – Physical force (pushed/shoved)**, § 87(2)(g)). § 87(2)(b) was recording on her cellphone when PO Rowley pushed her over with the door (**Allegation E: Abuse of Authority – Interference with recording**, § 87(2)(g)). PO Rowley and PO Nuesi entered § 87(2)(b)'s apartment and explained to § 87(2)(b) that she had to be evaluated because of the way the call came in (**Allegation F: Abuse of Authority – Threat re: removal to hospital**, § 87(2)(g)). PO Michael Moran and PO Daniel Halligan, of PSA 4, responded several minutes later but remained in the hallway outside of § 87(2)(b)'s apartment. § 87(2)(b) stated that she felt uncomfortable with the male officers and additional units were requested.

PO Casandra Ziegler, PO Monica Gorman, and PO Whitney Merizalde, of PSA 4, responded and entered § 87(2)(b)'s apartment (**Allegation G, H, and I: Abuse of Authority – Entry of Premises**, § 87(2)(g)). PO Ziegler, PO Gorman, and PO Merizalde confirmed with § 87(2)(b) and § 87(2)(b) who was still on speakerphone, that it was a miscommunication between NYC Well and the 911 operator. PO Ziegler informed § 87(2)(b) that her supervisor would still have to verify that she was okay and told her that emergency medical services (EMS) were on their way. PO Ziegler told § 87(2)(b) that if she did not cooperate by speaking to the sergeant she would have to go to the hospital (**Allegation J: Abuse of Authority – Threat re: removal to hospital**, § 87(2)(g)). Sergeant Dion Gaspard of PSA 4 entered § 87(2)(b)'s apartment and confirmed that she was not suicidal (**Allegation K: Abuse of Authority – Entry of Premises**, § 87(2)(g)). Sgt. Gaspard told § 87(2)(b) that she could refuse medical treatment when she spoke with EMS. § 87(2)(b) briefly spoke to an EMT and then all the officers left. Sergeant David Fagnoli, PO Shawn Reiss, and PO Vincent Ayres of PSA 4 had also responded to the incident location but did not enter or interact with § 87(2)(b).

This incident resulted in no summons or arrests.

There were 13 body-worn camera videos (**BR 01, BR 02, BR 03, BR 04, BR 05, BR 06, BR 07, BR 08, BR 09, BR 10, BR 11, BR 12, and BR 13**). § 87(2)(b) provided 10 cellphone videos (**BR 14, BR 15, BR 16, BR 17, BR 18, BR 19, BR 20, BR 21, BR 22, and BR 23**). Relevant sections are discussed below. There were eight NYCHA videos, however, they did not capture the incident location (**BR 24, BR 25, BR 26, BR 27, BR 28, BR 29, BR 30, and BR 31**).

§ 87(2)(g)

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Martin Rowley entered § 87(2)(b) in Manhattan.

Allegation (B) Abuse of Authority: Police Officer Ricardo Nuesi entered § 87(2)(b) in Manhattan.

Allegation (C) Abuse of Authority: Police Officer Martin Rowley threatened to remove § 87(2)(b) to the hospital.

Allegation (D) Force: Police Officer Martin Rowley used physical force against § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Martin Rowley interfered with § 87(2)(b)'s use of a recording device.

Allegation (F) Abuse of Authority: Police Officer Ricardo Nuesi threatened to remove § 87(2)(b) to the hospital.

Allegation (G) Abuse of Authority: Police Officer Casondra Ziegler entered § 87(2)(b) in Manhattan.

Allegation (H) Abuse of Authority: Police Officer Monica Gorman entered § 87(2)(b) in Manhattan.

Allegation (I) Abuse of Authority: Police Officer Whitney Merizalde entered § 87(2)(b) in Manhattan.

Allegation (J) Abuse of Authority: Police Officer Casondra Ziegler threatened to remove § 87(2)(b) to the hospital.

Allegation (K) Abuse of Authority: Sergeant Dion Gaspard entered § 87(2)(b) in Manhattan.

It was undisputed that PO Rowley and PO Nuesi responded to a radio run for a wellness check for a female with suicidal thoughts.

§ 87(2)(b) consistently stated (**BR 32, BR 33, and BR 34**) that earlier that day she told her friend § 87(2)(b) (no last name provided) that she was depressed. At approximately 8:25 p.m., PO Rowley and PO Nuesi came to § 87(2)(b)'s door. PO Rowley told § 87(2)(b) that police had received a call that she was not taking her medication and informed her that they were there to do a wellness check. § 87(2)(b) initially refused to open the door and did not know what was going on because she did not take any medication. § 87(2)(b) cracked her door open and asked the officers to leave. § 87(2)(b) tried to shut the door and PO Rowley placed his foot in the doorway to prevent it from closing. PO Rowley instructed § 87(2)(b) to call whoever called 911 and § 87(2)(b) called her friend § 87(2)(b) and put her on speakerphone. § 87(2)(b) explained that she had called NYC Well to send someone to check on her and stated that she did not call 911.

Approximately five minutes later, PO Rowley pushed the door open, causing § 87(2)(b) to fall backward and hit her mid-back on the wall behind her door. § 87(2)(b) was holding her cell phone and was recording as she fell to the floor. PO Rowley and PO Nuesi went into § 87(2)(b)'s apartment and told her that she had to speak to EMS otherwise she would have to go to the hospital. PO Rowley and PO Nuesi called for additional units over the radio. Three additional male officers arrived and briefly spoke to PO Rowley and PO Nuesi. Approximately 10 minutes later, female officers arrived and entered § 87(2)(b)'s apartment. The female officers told § 87(2)(b)

§ 87(2)(b) to fix her clothes as she was only wearing a night top and told her that she needed to talk to EMS. An EMT and Sgt. Gaspard entered § 87(2)(b)'s apartment. The EMT told § 87(2)(b) to cooperate and she would not have to go to the hospital. § 87(2)(b) signed a document refusing treatment and everyone left. § 87(2)(b) did not seek medical treatment for the injury to her back.

§ 87(2)(b) stated that the three additional male officers who arrived after PO Rowley and PO Nuesi had also entered her apartment, however, body-worn camera footage showed that of the officers who arrived after PO Rowley and PO Nuesi, only PO Ziegler, PO Gorman, PO Merizalde and Sgt. Gaspard entered her apartment.

PO Rowley stated (**BR 35**), that he received a radio run in which a mental health facility requested a wellness check for a female who was believed to be suicidal and on medication. § 87(2)(b) initially refused to open the door and PO Rowley informed her that they would have to remove the door from the hinges if she did not open it. § 87(2)(b) placed a phone call to § 87(2)(b) and put her on speakerphone. PO Rowley believed § 87(2)(b) was a medical professional and that she was the one who had called 911, however he was not certain because PO Nuesi had performed the call back. § 87(2)(b) asked PO Rowley to leave and PO Rowley explained that it was police procedure to make sure that § 87(2)(b) was okay because the call came over as suicidal. PO Rowley explained during his interview that although he believed § 87(2)(b) was a medical professional, he still needed EMS to come because he could not evaluate § 87(2)(b) himself.

§ 87(2)(b) opened the door a crack and PO Rowley put his foot in the door. § 87(2)(b) tried closing the door on PO Rowley's foot. PO Rowley instructed § 87(2)(b) not to shut the door on him and pushed back on the door with both arms extended. PO Rowley could not see § 87(2)(b) while he pushed the door, but he could feel resistance. PO Rowley explained during his interview that he needed to open § 87(2)(b)'s door so that she could not barricade herself. PO Rowley added that § 87(2)(b) stated she had a baby inside the apartment, so the baby's safety was also of importance. PO Rowley entered § 87(2)(b)'s apartment and § 87(2)(b) was sitting on the floor. PO Rowley waited for his sergeant, Sgt. Gaspard, to arrive. PO Rowley stated during his interview that he could not leave § 87(2)(b) alone until EMS arrived for her own safety. Sgt. Gaspard arrived and instructed PO Rowley to leave.

The EVENT Information (**BR 36**) showed that the call came over as wellness check for § 87(2)(b) who was a § 87(2)(b)-year-old black female, and that she had suicidal thoughts. § 87(2)(b)'s address and phone number were provided. The caller left a call back number and was calling from NYC Well.

PO Rowley's body-camera footage (see IA 32, **BR 02**) captured the interactions leading up to PO Rowley pushing the door open. The video opens with PO Rowley and PO Nuesi standing outside of § 87(2)(b)'s door which is cracked open wide enough to see § 87(2)(b)'s face. At 00:33 seconds, PO Nuesi is shown holding his asp in § 87(2)(b)'s door to prevent it from shutting. § 87(2)(b) is talking on speakerphone with § 87(2)(b) and PO Rowley and PO Nuesi are trying to convince § 87(2)(b) to let them speak to § 87(2)(b) because at the time they believe that § 87(2)(b) called 911. At 3:50 minutes, PO Rowley told § 87(2)(b) that if she did not cooperate, then EMS would come and "drag [her] out of [her] apartment." At 4:17 minutes, PO Nuesi says, "Ma'am you stated that she was suicidal," and § 87(2)(b) says, "I was concerned because I haven't heard from her." PO Rowley and PO Nuesi attempt to speak to § 87(2)(b) and § 87(2)(b) continues to yell over her. At 4:58 minutes, PO Rowley informs § 87(2)(b) that if she lets him speak to § 87(2)(b) it would expediate the process. PO Rowley says, "If you open the door and let us speak to her," and § 87(2)(b) interrupts and says, "I don't have to open my door." At 5:33

minutes, PO Rowley asks § 87(2)(b) to step back from the door twice before pushing open the door. § 87(2)(b) screams as the door opens and she falls to the floor. PO Rowley and PO Nuesi walk into § 87(2)(b)'s apartment.

§ 87(2)(b)'s cellphone footage (see IA 65, **BR 20**) captured PO Rowley opening § 87(2)(b)'s door. Based on the location of the camera, § 87(2)(b) was standing close to the door when PO Rowley quickly pushed it open.

PO Nuesi's body-camera footage (see IA 31, **BR 01**), captured PO Nuesi attempting to explain the nature of the call they received once they have gained entry to § 87(2)(b)'s apartment. At 5:54 minutes, PO Nuesi addresses § 87(2)(b) and says, "Ma'am, you called over a suicidal person, we cannot just leave the apartment." § 87(2)(b) says, "I asked you to do a wellness check." PO Nuesi replies, "Ma'am, the call we received stated that you called because the female you were speaking to has suicidal tendencies." At 6:49 minutes, PO Rowley asks § 87(2)(b) if she is § 87(2)(b)'s doctor. § 87(2)(b) responds and says that she is not § 87(2)(b)'s doctor, but she has worked with § 87(2)(b) for a very long time and is one of her counselors. At 7:24 minutes, § 87(2)(b) says, "Can you guys please leave," and PO Rowley responds, "No ma'am we cannot leave, she has to get evaluated by EMS [...] Because of the way you called it into 911 she has to be evaluated. I'm sorry about the miscommunication but we cannot legally let her go." PO Nuesi addresses § 87(2)(b) and says, "Ma'am, the way the call came over you have to go with the ambulance."

PO Ziegler's body-worn camera footage (see IA 35, **BR 05**) captured PO Ziegler, PO Gorman, and PO Merizalde entering § 87(2)(b)'s apartment. At 3:50 minutes, § 87(2)(b) begins explaining to PO Ziegler, PO Gorman, and PO Merizalde what had happened with PO Rowley and PO Nuesi. Over speakerphone, § 87(2)(b) states that she specifically told NYC Well that § 87(2)(b) did not have any current suicidal ideation. At 4:37 minutes, PO Gorman shows § 87(2)(b) her department issued smartphone and says, "I need to show you something, look this is how we got the job." § 87(2)(b) says, "It says a wellness check." PO Gorman says, "Yeah, and see this," and points at the phone. § 87(2)(b) says, "Okay, but what they did was totally uncalled for." At 6:47 minutes, PO Ziegler asks § 87(2)(b) to confirm that she did not tell § 87(2)(b) that she wanted to hurt herself. § 87(2)(b) does not respond, and PO Ziegler says, § 87(2)(b) I need you to talk to me. If you don't, then EMS is going to come in here and they're going to want you to go get evaluated." At 9:52 minutes, PO Ziegler explains the situation to Sgt. Gaspard and says § 87(2)(b) never told § 87(2)(b) her counselor, that she was suicidal, and that it was just supposed to be a wellness check. Sgt. Gaspard confirms that § 87(2)(b) can refuse medical attention and asks to see her and says he needs to verify it. At 12:17 minutes, PO Ziegler asks § 87(2)(b) to get dressed so she can speak to the sergeant and says that if she does not cooperate, then she is "going to have to go."

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

Patrol Guide procedure 221-13 (**BR 37**) states that when an officer reasonably believes a person who appears to be emotionally disturbed is a danger to themselves or others then officers are permitted to use reasonable force necessary to gain control or take the person into custody and have the emotionally disturbed person removed to the hospital in an ambulance.

Patrol Guide procedure 221-01 (**BR 42**) states that the primary duty of all members of service is to protect life. Officers may use reasonable force to protect life and should consider the immediacy of the perceived threat or harm to the subject when determining whether the force is reasonable under the circumstances.

In People v. Rodriguez, 77 A.D. 3d 280 (2010) (**BR 38**), the court found that officers were permitted to make a warrantless entry of a premises when the officers reasonably believed that there was an emergency which required immediate assistance for the protection of life or property, and that there was a reasonable basis to associate the premises with the emergency at hand.

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 39**).
- PO Rowley has been a member of service for seven years and a subject in three additional CCRB complaints and six allegations, none of which were substantiated.
 - § 87(2)(g)
- PO Nuesi has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.

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- PO Ziegler has been a member of service for five years and this is the first CCRB complaint to which she has been a subject.
- PO Gorman has been a member of service for 3 years and a subject in one additional CCRB complaint and three allegations, one of which was cited for other misconduct.
 - § 87(2)(g)
- PO Merizalde has been a member of service for five year and a subject in two additional CCRB complaints and four allegations, none of which were substantiated.
 - § 87(2)(g)
- Sgt. Gaspard has been a member of service for 12 years and a subject in two additional CCRB complaints and three allegations, none of which were substantiated.
 - § 87(2)(g)

- § 87(2)(b) declined to meditate this complaint.
- As of January 17, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**BR 40**).
- § 87(2)(b)

Investigator: _____

Signature _____ Print Title & Name _____ Date _____